

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT PORTER,	)
	) Civil Action No. 04 - 1228
	)
Plaintiff,	) District Judge Nora Barry
	) Fischer/
v.	) Magistrate Judge Lisa Pupo
	) Lenihan
A. KING, Correction	)
Officer; ORENBAUN,	)
Correction Officer; CONNOR,	)
Correction Officer; MARK	)
CAPOZZA, Unit Manager;	)
DURCO, (Sergeant); THE	)
LIEUTENANT; and THE	
SERGEANT,	
Defendants.	

**MEMORANDUM ORDER**

Currently pending before the Court is a Joint Motion for Clarification (doc. no. 114) as to the Memorandum Order dated December 17, 2007 (doc. no. 89).

By way of background, Judge Lenihan filed a Report and Recommendation on October 30, 2007 (doc. no. 78), recommending that Defendants' Motion for Summary Judgment (doc. no. 70) be granted in its entirety. On November 13, 2007, Plaintiff filed Objections (doc. no. 79) wherein he advised the Court that prisoner David Serrano observed defendants King and Orenbaun assault Plaintiff at

and near his cell in the Special Management Unit (SMU) at SCI-Greene on September 16, 2002. On November 19, 2007, Plaintiff filed an affidavit by David Serrano (doc. no. 81) averring that he observed defendants King and Orenbaun assault Plaintiff on September 16, 2002 and that defendant King raised his hand to a guard in the bubble telling him to open cell number 10.

On review Judge Fischer noted in her Memorandum Order dated December 17, 2007, because Plaintiff failed to present this evidence in his Opposition to Defendants' Motion, the Court was not required to take it into consideration. Notwithstanding, because Plaintiff was then appearing *pro se*, the Court did accept this evidence as part of the record and held that Plaintiff had submitted sufficient evidence to show a disputed issue of fact as to whether Defendants King and Orenbaun used excessive force on September 16, 2002 and whether Defendant Connor knowingly aided this attack by opening the door of Plaintiff's cell. Consequently, Judge Fischer granted Defendants' Motion for Summary Judgment **except** as to Plaintiff's excessive force claims against Defendants King, Orenbaun and Connor as to the alleged incident that occurred on September 16, 2002. Otherwise, Judge Fischer adopted the Report and Recommendation (doc. no. 78) as the Opinion of the court as to all claims **except** the alleged incident of September 16, 2002.

Thus, the only claim remaining in this action is the alleged incident of September 16, 2002 against Defendants King Orenbaum and Connor. Defendants were granted summary judgment as

to Plaintiff's excessive force claim of September 26, 2002.

s/Lisa Pupo Lenihan  
Lisa Pupo Lenihan  
United States Magistrate Judge

s/Nora Barry Fischer  
Nora Barry Fischer  
United States District Judge

Dated: December 11, 2008

cc/ecf: All Counsel of Record.